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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**JOINT STIPULATION AND ORDER
ESTABLISHING SOURCE CODE
INSPECTION PROTOCOL**

Judge: Hon. Vince Chhabria
Hon. Jacqueline Scott Corley
Discovery Special Master Daniel Garrie, Esq.

STIPULATED SOURCE CODE INSPECTION PROTOCOL

Plaintiffs and Facebook, by and through undersigned counsel, respectfully submit this Stipulated Source Code Inspection Protocol (“Protocol”).

1. PURPOSE AND SCOPE

a. Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to the following Source Code Inspection Protocol.

b. The need for this Protocol arises out of the Special Master’s March 3, 2022 “Order Regarding Plaintiffs’ Motion to Compel Documents Facebook Designated as Privileged,” which found that, “due to the highly sensitive nature of Facebook’s proprietary source code, an inspection protocol with suitable protections is an appropriate method to disclose the trade secret documents at issue” and ordered Facebook to make the documents available for inspection.

c. Facebook is willing to make available for inspection on the terms described in this Protocol the documents that are the subject of the Special Master’s March 3, 2022 Order, namely, (1) documents Facebook has withheld in full as source code, as well as (2) documents produced containing source code redactions (“Source Code Documents”). Facebook may designate the Source Code Documents or other source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it comprises or includes confidential, proprietary, or trade secret source code.

d. The Parties further agree that, in the event Facebook agrees or is ordered to make any other source code beyond the Source Code Documents available for inspection, or otherwise agrees or is ordered to allow inspection any other source code not contemplated by the Special Master’s March 3, 2022 Order, the terms of this Protocol will govern such inspection unless Facebook notifies Plaintiffs in writing within three business days from any such order or agreement that it believes additional or different provisions or protections will be necessary for such inspection (or that such inspection must otherwise depart from the terms of this Protocol). In that event, the Parties will meet and confer on the terms of a supplemental or amended source code inspection protocol within two business days of the written notice. If the Parties cannot agree on the terms of a supplemental or amended source code

inspection protocol with respect to such additional source code, the disagreement shall be resolved in accordance with the Special Master's dispute resolution procedures. For avoidance of doubt, absent written notice from Facebook and the aforementioned meet and confer and dispute resolution procedures, the terms and provisions of this Protocol will govern review of any source code beyond the Source Code Documents, subject to Facebook's reservation of right to notify Plaintiffs in writing within three business days that additional provisions or protections will be necessary with respect to any such source code.

2. DEFINITIONS

a. Unless defined herein, all terms shall have the same meaning and scope as defined in Section 2 of the Pretrial Order No. 10: Protective Order, ECF No. 122 (August 17, 2018) (hereinafter, the "Protective Order").

b. Competitor: the term "Competitor" will have its ordinary meaning, which solely for purposes of this case based on the allegations in this case includes, but is not limited to, Google, Apple, Tencent, Amazon, Microsoft/LinkedIn, Pinterest, Twitter, Bytedance (including TikTok), Reddit, Tumblr, NextDoor, Quora, and Snap. Facebook has the right to update this list with additional competitors.

c. Source Code Documents: the source code documents that are the subject of the Special Master's March 3, 2022 "Order Regarding Plaintiffs' Motion to Compel Documents Facebook Designated as Privileged"; namely, (1) documents Facebook has withheld in full as source code, as well as (2) documents Facebook has produced containing source code redactions.

d. "HIGHLY CONFIDENTIAL – SOURCE CODE" Protected Material: Facebook may designate a Source Code Document as "HIGHLY CONFIDENTIAL – SOURCE CODE" if it comprises or includes sensitive "CONFIDENTIAL" Protected Material representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

e. Source Code Computer: the computer on which Source Code Documents will be made

1 available for inspection, according to the parameters set forth in this Protocol. The Source Code
2 Computer will not have Internet access or network access to other computers.

3 f. Source Code Review Room: the room in which Source Code Documents will be made
4 available for inspection, according to the parameters set forth in this Protocol. The Source Code
5 Review Room will not have Internet access or network access to other computers.

6 3. SOURCE CODE INSPECTION PROTOCOL

7 a. “HIGHLY CONFIDENTIAL – SOURCE CODE” Protected Material is subject to the
8 protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Protected
9 Material and may only be shown to Outside Counsel of Record and Experts (as those terms are defined
10 in the Protective Order). Experts (as defined by the Protective Order) of the Receiving Party whose
11 inspection is reasonably necessary for this litigation must sign the “Acknowledgment and Agreement
12 to be Bound” attached as Exhibit A to the Protective Order. *See also* ECF No. 122 at 7.2. Provided,
13 however, that no one who is a current employee of a Facebook Competitor or who anticipates founding
14 or joining a company that will be a Facebook Competitor during the pendency of this litigation is
15 permitted to inspect the Source Code Documents.

16 b. Facebook will make the Source Code Documents available for inspection by the persons
17 authorized to inspect it under section 3.a in searchable PDF format on the Source Code Computer,
18 during normal business hours (9:00 a.m. to 5 p.m. local time) or at other mutually agreed times, at any
19 Gibson Dunn & Crutcher LLP domestic office or other mutually agreed upon location, on a mutually
20 agreeable date. For avoidance of doubt, redactions made for reasons other than trade secret/source
21 code (e.g. attorney-client privilege or attorney work product) will remain on the Source Code
22 Documents for review.

23 c. The Source Code Documents will be made available for inspection on a Source Code
24 Computer in a Source Code Review Room, and Plaintiffs shall not copy, remove, or otherwise transfer
25 any portion of the source code onto any recordable media or recordable device.

26 d. Facebook may visually monitor the activities of the Receiving Party’s representatives
27 during any source code review, but only to ensure that there is no unauthorized recording, copying, or
28 transmission of the source code.

1 e. No recordable media or recordable devices, including, without limitation, sound
2 recorders, computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any
3 kind, shall be permitted into the Source Code Review Room.

4 f. Plaintiffs may request paper copies of limited portions of the Source Code Documents
5 (identifying pages by specific Bates numbers) that are reasonably necessary to the preparation of
6 filings, pleadings, expert reports, other papers, or for use as an exhibit at deposition or trial. Under no
7 circumstances will a Receiving Party be provided paper copies for the purposes of reviewing the Source
8 Code Documents, as review of Source Code Documents is only permitted electronically as set forth in
9 this section 3. In no case will Plaintiffs receive more than 20 consecutive pages or an aggregate of more
10 than 200 pages of source code during the duration of the case without prior written approval of
11 Facebook, which approval will not be unreasonably withheld. Plaintiffs will save PDF copies of the
12 Source Code Documents Plaintiffs are requesting in a folder on the desktop named "Print Requests"
13 with a subfolder identifying the date of the request. The PDF printouts must include identifying
14 information including the full file path and file name, page number, line numbers, and date. The request
15 for printed source code must be served via an email request identifying the subfolders of the "Print
16 Requests" folder that Plaintiffs are requesting. Within five (5) business days of such request, Facebook
17 will provide one copy of all such Source Code Documents on non-copyable paper including Bates
18 numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." If the request is served after
19 5:00pm Pacific Time, it will be deemed served the following business day. Plaintiffs may challenge
20 the amount of Source Code Documents to be provided in hard copy form under the Special Master's
21 dispute resolution procedures.

22 g. Plaintiffs shall maintain a log of all paper copies of the source code. The log shall
23 include the names of the reviewers and/or recipients of paper copies and locations where the paper
24 copies are stored. The Receiving Party shall maintain all paper copies of any printed portions of the
25 source code in a secured, locked area. The Receiving Party shall not create any electronic or other
26 images, or make electronic copies, of the source code from any paper copy of the source code for use
27 in any manner (including by way of example only, the Receiving Party may not scan the source code
28 to a PDF or photograph it), and shall not convert any of the information contained in the paper copies

1 into any electronic format. Images or copies of source code shall not be included in correspondence
2 between the Parties (references to production numbers shall be used instead), and shall be omitted from
3 court filings (but may be attached as exhibits to court filings as long as the exhibits are filed under
4 seal). The Receiving Party shall only request additional paper copies if such additional copies are (1)
5 necessary to attach as sealed exhibits to court filings or to a testifying Expert's expert report, (2)
6 necessary for deposition, or (3) necessary for trial. The Receiving Party shall not request paper copies
7 for the purposes of reviewing the source code other than electronically as set forth in paragraph (c) in
8 the first instance. To the extent a deposition is likely to involve source code, the Party taking the
9 deposition shall provide at least seven (7) days written notice of that fact, and the Producing Party will
10 make a source code computer available at the deposition, minimizing the need for additional paper
11 copies of source code. The Producing Party is not required to create a new Source Code Computer for
12 the purpose of depositions. Any paper copies used during a deposition shall be retrieved by the
13 Producing Party at the end of each day and must not be given to or left with a court reporter or any
14 other unauthorized individual.

15 h. The Producing Party shall install on the Source Code Computer tools that are sufficient
16 for viewing the code produced. The Receiving Party's Outside Counsel and/or experts/consultants may
17 request that commercially available software tools for viewing and searching source code be installed
18 on the Source Code Computer, provided, however, that (a) the Receiving Party possesses an
19 appropriate license to such software tools; (b) the Producing Party approves such software tools; and
20 (c) such other software tools are reasonably necessary for the Receiving Party to perform its review of
21 the source code consistent with all of the protections herein. The Producing Party shall approve
22 reasonable requests for additional commercially available software tools. The Receiving Party must
23 provide the Producing Party with the CD, DVD, file path, or Advanced Package Tool package
24 containing such licensed software tool(s) at least six business days in advance of the date upon which
25 the Receiving Party wishes to have the additional software tools available for use on the Source Code
26 Computer. The Producing Party shall make reasonable attempts to install the requested software but
27 will not be held responsible for the proper setup, functioning, or support of any software requested by
28 the Receiving Party. By way of example, the Producing Party will not compile or debug software for

1 installation.

2 i. The Receiving Party's Outside Counsel and/or experts/consultants shall be entitled to
3 take hand-written notes relating to the Source Code Documents but may not copy the source code into
4 the notes and may not take such notes electronically on the Source Code Computer itself or any other
5 computer.

6 j. The Receiving Party's Outside Counsel and any person receiving a copy of any Source
7 Code Document must maintain and store any paper copies of the Source Code Document at their offices
8 in a manner that prevents duplication of or unauthorized access to the source code, including, without
9 limitation, storing the Source Code Document in a locked room or locked cabinet at all times when it
10 is not being reviewed. Absent good cause shown, no more than a total of five (5) persons identified by
11 the Receiving Party, excluding Outside Counsel, shall have access to the Source Code Documents.

12
13 IT IS SO STIPULATED.

14
15 Dated: March 14, 2022

16 KELLER ROHRBACK L.L.P.

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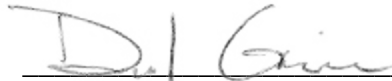
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ORDER

Pursuant to stipulation, IT IS SO ORDERED.

DATED: March 17, 2022



Daniel Garrie
Discovery Special Master